

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD COLLINS,

Plaintiff,

v.

**CITY OF PHILADELPHIA, et al.,
Defendants.**

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**Civil Action
No. 16-5671**

**DEFENDANTS' ANSWER, WITH AFFIRMATIVE DEFENSES,
TO PLAINTIFF'S COMPLAINT**

Defendants P/O Michael Berkery, Sgt. Edward Pisarek, and Det. Keith Scott,
(hereinafter "Answering Defendants"), by and through undersigned counsel, hereby
respond to Plaintiff's Complaint as follows:

ANSWER

1. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
2. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
3. The allegations as to Plaintiff's residence pertain to parties other than the Answering Defendant and constitute conclusions of law and /or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

4. Admitted in part, denied in part. It is admitted that the City of Philadelphia is a municipal corporation duly organized and operating under the rules and regulations set forth to them by the Commonwealth of Pennsylvania. The remaining allegations in this paragraph are denied.
5. Admitted only that P/O Michael Berkery is employed by the City of Philadelphia and is a resident of the United States. The remaining allegations are denied.
6. Admitted only that Sgt. Edward Pisarek is employed by the City of Philadelphia and is a resident of the United States. The remaining allegations are denied.
7. Admitted only that Det. Keith Scott is employed by the City of Philadelphia and is a resident of the United States. The remaining allegations are denied.
8. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
9. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
10. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
11. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

12. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
13. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
14. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
15. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
16. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
17. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
18. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

19. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
20. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
21. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
22. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
23. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
24. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
25. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

26. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
27. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
28. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
29. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
30. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
31. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
32. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

33. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
34. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
35. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
36. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
37. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
38. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
39. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

40. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
41. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
42. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT I

COUNT I

43. Answering Defendant incorporated by reference their answers to paragraphs 1 through 42, inclusive, as though fully set forth herein.
44. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
45. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.
46. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

47. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

48. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT II

49. Answering Defendant incorporated by reference their answers to paragraphs 1 through 48, inclusive, as though fully set forth herein.

50. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

51. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT III

52. Answering Defendant incorporated by reference their answers to paragraphs 1 through 51, inclusive, as though fully set forth herein.

53. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

54. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

COUNT IV

55. Answering Defendant incorporated by reference their answers to paragraphs 1 through 54, inclusive, as though fully set forth herein.

56. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

57. The allegations contained in this paragraph constitute conclusions of law and/or Plaintiff's statement of the case and, therefore, require no response. To the extent a response is required, denied.

JURY DEMAND

Answering Defendants demand a jury trial in this action.

WHEREFORE, the Answering Defendants deny liability on the cause of actions declared herein, and demand judgment in their favor plus interest and costs.

Respectfully Submitted,

Date: November 8, 2016

/s/ Aaron Shotland
Aaron Shotland
Pa. Attorney ID No. 205916
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102
(215) 683-5434
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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Answering Defendants assert all of the defenses, immunities, and limitations of damages available to them under the “Political Subdivision Tort Claims Act” and aver that Plaintiff’s remedies are limited exclusively thereto. Act of Oct 5, 1980, No. 142, P.L. 693, 42 Pa. C.S.A. § 8541 et seq.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff’s claims are barred by the doctrine of qualified immunity because, at all times material hereto, the individual defendants were carrying out their duties in a proper and lawful manner, and in the exercise of good faith.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the applicable Statute of Limitations.

FIFTH AFFIRMATIVE DEFENSE

The plaintiff’s claims are barred, in whole or in part, to the extent that he has failed to take reasonable measures to mitigate any or all damages.

SIXTH AFFIRMATIVE DEFENSE

The plaintiff’s claims are barred, in whole or in part, insofar as Answering Defendants’ purported actions or omissions were not the proximate cause of any alleged injury, loss, or damage incurred by the plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

At all times material to this civil action, Answering Defendants have acted in a

reasonable, proper, and lawful manner.

WHEREFORE, Answering Defendants deny liability upon all causes of action declared upon and demand judgment in their favor.

Respectfully Submitted,

Date: November 8, 2016

/s/ Aaron Shotland
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RICHARD COLLINS,	:	
Plaintiff,	:	
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	:	
CITY OF PHILADELPHIA, et al.,	:	
Defendants.	:	
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CERTIFICATE OF SERVICE

I, Aaron Shotland, Attorney for Defendants, certify that on this date, a true and correct copy of the Defendants' Answer, with Affirmative Defenses, to Plaintiff's Complaint was filed via the Court's electronic filing system and is available for downloading.

Date: November 8, 2016

/s/ Aaron Shotland
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